

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY L. KUFFEL

Appeal No. 95-2939
Application 08/050,690¹

HEARD: AUGUST 6, 1997

Before COHEN, LYDDANE, and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed April 20, 1993.

Appeal No. 95-2939
Application 08/050,690

This is an appeal from the examiner's refusal to allow claims 1, 2 and 6-10.² Claims 3-5 and 11 have been cancelled.

Appellant's disclosed invention pertains to a pushmount. A basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which is appended to this opinion.

THE REFERENCES

The following references are relied on by the examiner:

Nelson	3,205,546	Sept. 14, 1965
Osterland et al. (Osterland)	4,630,338	Dec. 23, 1986

THE REJECTIONS³

Claims 1, 2, 6 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Osterland.

Claims 1, 2, and 6-9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nelson.

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over Nelson.

The full text of the examiner's rejections and response to argument presented by the appellant appears in the final

² Claims 1, 6, 7 and 9 were amended after final.

³ A rejection under 35 U.S.C. § 112, second paragraph, of claims 1, 2 and 6-10 was overcome in an Amendment After Final filed on October 6, 1994. See Paper No. 11.

Appeal No. 95-2939
Application 08/050,690

rejection and examiner's answer (Paper Nos. 5 and 14), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 13 and 18).

OPINION

In reaching our conclusions on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied references and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations that follow.

We initially note that the law of anticipation does not require that the reference teach what the appellant is claiming, but only that the claims on appeal "read on" something disclosed in the reference. See Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983). In addition, the discovery of a new property or use of a previously known article cannot impart patentability to claims to the known article. See In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). Therefore, when analyzing the prior art under 35 U.S.C. § 102 in regard to the recitation in claim 1 of a "strap accepting channel", it is not necessary that anticipatory prior art teach a "strap" held within a channel which is disclosed. It

is only necessary that the disclosed channel be capable of accepting a strap.

We also note that claims in a patent application are to be given their broadest reasonable interpretation consistent with the specification during prosecution of a patent application. See In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). In this regard, we interpret the language "an offset planar portion on a top side of the strap accepting channel" of claim 1 to refer to a planar portion which is offset from any portion of the strap accepting channel.

Turning to the rejection of claim 1 as anticipated by Osterlund, we note that only two limitations in claim 1 are argued as differences between Osterlund and the subject matter of claim 1. First, the appellant contends that Osterland does not disclose a "strap accepting channel." Second, appellant contends that Osterland does not disclose an "offset planar portion."

With regard to the first limitation, appellant argues that rather than a strap accepting channel, Osterland discloses a one-piece molding clip with a triangular shaped upper body portion and that the top of the upper body portion includes toothed tabs 16 and 18 which are adapted to engage and retain the underside of a trim strip or decorative item. However, as noted above, it is

only necessary that Osterland include a channel which is capable of accepting a strap to read on the limitation of a "strap accepting channel." Osterland clearly discloses a channel defined as the space between planar top 14 and the triangular upper body portion. In addition, this channel is capable of accepting a strap therein.

Appellant also argues that Osterland teaches away from a strap accepting channel in that toothed tabs 16 and 18 would damage any strap which engaged the triangular portion. We do not find this argument persuasive because claim 1 is directed to a pushmount with a strap accepting channel not a strap per se. As such, the language of claim 1 is broad enough to include a strap accepting channel for a strap formed of any material including material which would not be affected by the tabs 16 and 18.

In regard to the second limitation of an "offset planar portion," the appellant argues that it is improper to read claim 1 such that the offset planar portion and the top of the channel are one and the same. However, as claim 1 recites "said strap accepting channel including an offset planar portion" (underlining ours), claim 1 establishes that the offset planar portion is part of or included in the strap accepting channel.

Appeal No. 95-2939
Application 08/050,690

Appellant also argues that offset is defined in Webster's Seventh New Collegiate Dictionary (G. & C. Merriam Co., 1969) as a horizontal ledge or an abrupt change in the dimension or profile of an object and that therefore Osterland does not disclose an offset planar portion. Appellant also directs our

Appeal No. 95-2939
Application 08/050,690

attention to the specification at page 4, lines 25-28 which states:

Once mount 10 is fixed to mounting surface 30, cable tie strap 26 can be passed through strap accepting channel 12, seated on offset portion 14 and engage bundle of wires 28 or the like.

Appellant concludes that in view of the figures and the written disclosure, the term offset describes an offset planar portion on a top side of the strap accepting channel. However, planar portion 14 of Osterland is also an offset planar portion on the top side of the strap accepting channel as it is offset from the triangular legs which form the channel which is capable of accepting a strap.

It is further argued by appellant that Osterland does not disclose a generally oblong passageway as recited in claim 2. The strap accepting channel of appellant's pushmount when viewed in cross section has an elongated (or oblong) bottom portion with a shorter upper portion. The channel of Osterland has an elongated or oblong upper portion with a gradually shortened bottom portion. We note that the claim recites a "generally" oblong passageway thereby allowing for deviations from a perfect oblong passageway. In light of the above, we conclude that Osterland discloses a generally oblong passageway as claimed.

Appellant additionally argues that Osterland does not disclose resilient reversely bent extensions as recited in claim 6. This argument is not persuasive because the legs in Osterland do include resilient reversely bent members 34 and 36 (Figure 4).

The argument is also made by appellant that Osterland does not disclose a centering tab as recited in claim 7. This argument is likewise not persuasive because Osterlund discloses tabs 38, 40 which are inwardly offset so that the outside of tabs 38 and 40 press against the hole in the mounting surface after the legs pass through the hole and flex apart (Fig. 2).

In view of the foregoing, we will sustain the examiner's rejection of claims 1, 2, 6 and 7 as unpatentable under 35 U.S.C. § 102(b) as anticipated by Osterland.

Turning next to the rejection of claims 1, 2, and 6-9 as anticipated by Nelson, the appellant argues that Nelson does not disclose a strap accepting channel. We agree with the appellant that the area between legs 12 is not a strap accepting channel. A "channel" is defined as "a closed course or conduit through which anything passes." Webster's New Collegiate Dictionary (G. & C. Merriam Co., 2d Ed., 1954). The space between legs 12 cannot be considered a channel because it is not closed. In addition, the legs 12 cannot be considered to extend from the

Appeal No. 95-2939
Application 08/050,690

underside of the channel because the legs themselves form the channel. In view of the foregoing, we will not sustain the rejection of claims 1, 2 and 6-9 based upon the Nelson patent.

In addition, we find no suggestion or teaching in Nelson for a strap accepting channel. Therefore, we will not sustain the examiner's rejection of claim 10 under 35 U.S.C. § 103.

In summary, the examiner's rejection of claims 1, 2, 6 and 7 as anticipated by Osterland is sustained. The examiner's rejection of claims 1, 2 and 6-9 as anticipated by Nelson is reversed. The examiner's rejection under 35 U.S.C. § 103 of claim 10 as unpatentable over Nelson is not sustained.

Appeal No. 95-2939
Application 08/050,690

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a). (August 1, 1989).

AFFIRMED-IN-PART

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
WILLIAM E. LYDDANE)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

Appeal No. 95-2939
Application 08/050,690

APPENDIX

1. A pushmount comprising:

a one-piece folded metal mount member having a formed strap accepting channel;

a pair of spaced apart retaining legs extending from an underside of the strap accepting channel;

said strap accepting channel including an offset planar portion on a top side of the strap accepting channel to seat a cable tie strap.

Appeal No. 95-2939
Application 08/050,690

Charles R. Wentzel
Legal Department
PANDUIT CORPORATION
17301 Ridgeland Avenue
Tinley Park, IL 60477